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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Mike Kinsella

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EXAMINER

NGUYEN, LEE

ART UNIT

PAPER NUMBER

2618

MAIL DATE

DELIVERY MODE

10/28/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	09/592,563	KINSELLA, MIKE	
	Examiner	Art Unit	
	LEE NGUYEN	2618	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 August 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 and 47-49 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 48 and 49 is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☒ Claim(s) 47 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 8/8/08 has been entered.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1, 5-8, 10, 12-14, and 19-21 are rejected under 35 U.S.C. 102(e) as being anticipated by Fraccaroli (US 6,549,768).

Regarding claim 1, Fraccaroli teaches a method of transmitting a message to one or more recipients in a message pushing system that includes a database 106 of user profiles of individual potential recipients (Fraccaroli, however, describes a message pushing system that stores a database of details of individual potential recipients of a

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message in server 106, Fig. 1, Col. 5, ll.26-36. In Fraccaroli, a potential recipient can be a known person, Col. 8, ll.44-46, a person that enters a location area Col. 8, ll.65-67; Col. 9, ll.57-62; Col. 10, ll.3-5, a close friend, Col. 9, ll.6-9 or a person with similar interests, Col. 10, ll.25-28), and telecommunications links for communicating with message sending and message receiving devices (A telecommunications link, i.e., message sending and message receiving, is established between two mobile handsets 102, Col. 3, ll.46-55; Col. 4, ll.64 and 65), the method comprising:

receiving a message from a message sending device, said message comprising details of an intended recipient of said message (The message pushing system is adapted to receive a message, i.e., a profile of the intended recipient from one of the handsets 102, Col. 8, ll. 35-66; Col. 10, ll.52-56; Col. 11, ll. 12-16);

interrogating said database to find user profiles matching said details of the intended recipient of said message thereby establishing one or more members who may be the intended recipient (The message pushing system compares the details of the intended recipient with the database of potential recipients, and selects one or more members as an intended recipient of the message, Col. 9, ll.50-65), and

transmitting said message to message receiving means of the one or more members who may be the intended recipient (Once a matching recipient is selected, the message pushing system is adapted to (and does) transmit the message to the selected mobile message receiving handset 102, Col. 11, ll. 12-22).

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Regarding claims 5-6, Fraccaroli teaches that the database also includes information about the current location of the recipient (col. 10, ll. 25-28).

Regarding claims 7-8, Fraccaroli also teaches frequently visited locations which including previous locations in the frequently visited locations (col. 10, ll. 25-28).

Regarding claim 10, Fraccaroli also teaches updating their details automatically (col. 9, ll. 66 – col. 10, ll. 3, location update).

Regarding claim 12, Fraccaroli also teaches allowing messages to be delivered to recipients without the sender of the message knowing the identity of the recipient (col. 2, line 52).

Regarding claims 13-14, Fraccaroli also teaches that the comparison between the details of the potential recipient and member's details on the database does not need to be exact and how close a match between details is required for that message to be sent to that potential recipient (col. 8, ll. 43-46).

Regarding claim 19, the Fraccaroli also teaches relational database (col. 9, ll. 6-9).

Regarding claim 20, Fraccaroli also teaches that the message is transmitted to the recipient or recipients only on request from the recipient or recipients (willingness, col. 2, ll. 58).

Regarding claim 21, Fraccaroli also teaches that a web site is used to display the message (col. 8, ll. 52).

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Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 2-4, 9, 11, 15-18, 47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fraccaroli in view of the admitted prior art admitted by Fraccaroli, referred to as the admitted prior art hereinafter.

Regarding claims 2-3, Fraccaroli fails to teach the details of individual potential recipients including their sex, their hair length and color, their eye color, their age, their height. The admitted prior art teaches the details of individual potential recipients including their sex, their hair length and color, their eye color, their age, their height (col. 1, line 32-35). It would have been obvious to one having ordinary skill in the art to include sex, their hair length and color, their eye color, their age, their height of the admitted prior art to recipient profile of Fraccaroli since the profiles of the admitted prior art and Fraccaroli are just independent data and could be used in combination to achieve predictable results of providing more profiles to the users.

Regarding claim 4, the admitted prior art of Fraccaroli further teaches including one or more of the e-mail address (col. 1, line 47). The combination can achieve predictable results of providing e-mail address.

Regarding claims 9, 11, the admitted prior art inherently teaches updating their details (col. 1, lines 32-34, see age, marital status, interests, which can be changed in

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the future). The combination can achieve predictable results of updating the most new information.

Regarding claim 15, the admitted prior art also teaches that one device can function as both a message sending means and a message receiving means (e-mail, col. 1, line 47). The combination can achieve predictable results of sending e-mail.

Regarding claim 16, Fraccaroli also teaches mobile communication (fig. 1, numeral 102). Fraccaroli fails to teach using WAP or I-MODE. It is taken official notice that the art using Wireless Access Protocol (WAP) in mobile communication is conventionally well known and considered as a standard. It would have been obvious to one of ordinary skill in the art at the time the invention was made to include WAP to the system of the admitted prior art in order to allow mobile to access to the Web.

Regarding 17, the admitted prior art also teaches the communication link including the Internet (col. 1, line 46). The combination can achieve predictable results of using the Internet.

Regarding claim 18, the admitted prior art also teaches e-mail (col. 1, line 49).

Allowable Subject Matter

5. Claim 47 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Regarding claim 47, the claim is allowable for the reason as argued in the remarks.

6. Claims 48-49 are allowed.

The claims are allowable for the reason as argued in the remarks.

Response to Arguments

7. Applicant's arguments filed 1/11/08 have been fully considered but they are not persuasive.

In the remarks, Applicant contends that the previous appeal and the BPAI's decision was directed to a different set of apparatus claims and that the Appeal did not relate to the currently pending set of method claims.

In response, after carefully considering this argument, it can be found that although the current claims are method claims, they do not differ from the previous apparatus claims that were considered by the Board of Appeal and Interferences, and it is repeated as followed:

Applicant contends that in Fraccaroli the subscriber does not select an individual intended recipient, nor does the subscriber send a message to a central system that describes physical attributes or a location of such a selected, intended recipient. Rather, these matches are generated by the matching engine 107. Further, as with the prior art

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systems, the system shown in Figures 1-2 of Fraccaroli requires multiple messages to be generated and sent in order to initiate and complete contact between a requester and a recipient. Fraccaroli neither discloses nor suggests that a single message may be used to list personal information and preferences, interrogate a central database, and then transmit to a recipient, as recited in independent claim 1.

In response, Applicant repeats the argument that was previously presented in the appeal brief and the reply brief, which was considered by The Board of Appeal and Interferences. The examiner recites the fact findings that the Board of Appeal and Interferences applies to the rejection of claim 1 as followed:

Regarding claim 1, Fraccaroli teaches a method of transmitting a message to one or more recipients in a message pushing system that includes a database 106 of user profiles of individual potential recipients (Fraccaroli, however, describes a message pushing system that stores a database of details of individual potential recipients of a message in server 106, Fig. 1, Col. 5, ll.26-36. In Fraccaroli, a potential recipient can be a known person, Col. 8, ll.44-46, a person that enters a location area Col. 8, ll.65-67; Col. 9, ll.57-62; Col. 10, ll.3-5, a close friend, Col. 9, ll.6-9 or a person with similar interests, Col. 10, ll.25-28), and telecommunications links for communicating with message sending and message receiving devices (A telecommunications link, i.e., message sending and message receiving, is established between two mobile handsets 102, Col. 3, ll.46-55; Col. 4, ll.64 and 65), the method comprising:

receiving a message from a message sending device, said message comprising details

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of an intended recipient of said message (The message pushing system is adapted to receive a message, i.e., a profile of the intended recipient from one of the handsets 102, Col. 8, ll. 35-66; Col. 10, ll.52-56; Col. 11, ll. 12-16);

interrogating said database to find user profiles matching said details of the intended recipient of said message thereby establishing one or more members who may be the intended recipient (The message pushing system compares the details of the intended recipient with the database of potential recipients, and selects one or more members as an intended recipient of the message, Col. 9, ll.50-65), and transmitting said message to message receiving means of the one or more members who may be the intended recipient (Once a matching recipient is selected, the message pushing system is adapted to (and does) transmit the message to the selected mobile message receiving handset 102, Col. 11, ll. 12-22).

Based on these facts, the Board of Appeal and Interferences concluded that Fraccaroli anticipates independent claim 1 as well as the obviousness of dependent claims 2-4, 9, 11, 15-18.

The argument concerning newly added claims 47-49 are moot in view of the allowance.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LEE NGUYEN whose telephone number is 571-272-7854. The examiner can normally be reached on 8:00 - 4:30.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, NAY A. MAUNG can be reached on 571-272-7882. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

LEE NGUYEN
Primary Examiner
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